IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 643 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UMRETH MUNICIPALITY

Versus

KUMUDCHANDRA KESHAVLAL PANDYA

Appearance:

MR SANJAY DOSHI for Petitioner

MR YATIN SONI for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/03/2000

ORAL JUDGEMENT

Heard the learned advocates appearing for the respective parties.

Mr. Soni, learned advocate for the respondent-workman informed this Court that in this petition Rule has been issued and interim relief has been

granted against the payment of backwages on 1st February, 1993. Thereafter, the respondent-workman, who has been reinstated in service pursuant to the award of the Labour Court, Anand has now retired from service.

Mr. Yatin Soni appearing on behalf of the respondent-workman has read over the entire award passed by the Labour Court, Anand dated 13th October, 1992. The brief facts of the present petition are to the effect that the respondent workman was appointed by the petitioner-Municipality on 8th September, 1982 as a Pump Operator and thereafter he remained in service continuously and by an oral order, on 10th November, 1983, his service was terminated by the petitioner-Municipality. Pursuant to his termination, the respondent-workman raised an industrial dispute which was referred for adjudication by an Order dated 26th April, 1984 to the Labour Court at Anand, being Reference No. 60 of 1992 [Old Number being 151 of 1984]. Before the Labour Court, the respondent-workman has filed a written statement Exh. 10. The respondent-workman was examined before the Labour Court vide Exh. 11 and the petitioner-Municipality has also examined its witnesses vide Exh. 21. The Labour Court considered the arguments advanced by both the parties before it. After considering the evidence brought on the record, the Labour Court came to the conclusion that the respondent-workman has completed 240 days' service within a period of twelve months; as the respondent-workman was appointed on 8th September, 1982 and his service was terminated on 10th November, 1983 by the petitioner-Muncipality. The petitioner-Municipality has not produced any relevant records to deny the said factual aspect which was deposed by the respondent workman. The petitioner-Municipality has not produced any master-roll or attendance register to dislodge this fact stated by the respondent-workman on oath before the Labour Court. Therefore, the Labour Court relying upon the evidence adduced by the respondent-workman, came to the conclusion that the respondent-workman had completed 240 days continuous service within a period of one year and at the time of termination of the respondent workman, Section 25-F of the I.D Act has not been complied with by the petitioner-Municipality and no notice or notice-pay and/or retrenchment compensation was paid to the respondent-workman while terminating his service. The said fact has not been disputed by the petitioner-Municipality before the Labour Court. The Labour Court has also considered the settled law in respect of the violation of Section 25-F laid down by the various High Courts and the Apex Court. In case of

breach of the condition precedent laid down under Section 25-F, the retrenchment of concerned workman is considered to be void ab initio. The law on that point is settled and it has been considered by the Labour Court also. Thereafter, the Labour Court has also considered that according to the evidence vide Exh. 11 of the respondent-workman that he remained unemployed during the pendency of the Reference from the date of his termination. The petitioner-Municipality has not proved this fact by leading oral or documentary evidence with regard to the gainful employment of the respondent workman during the pendency of the reference. It was contended that the respondent workman was not terminated by the petitioner-Municipality but he had left the service of his own but the labour Court has not considered this contention and came to the conclusion that the petitioner-Muncipality has not produced any record before it. The Labour Court while considering the fact that if the workman has left the job of his own then some letters/correspondence must have been addressed to the respondent-workman informing him to report for duty but no such letters or correspondence were produced by the petitioner-Municipality on record. The second contention has been raised by the petitioner-Municipality before the Labour Court that the respondent-workman was remaining negligence in discharge of his duty and therefore his service has been terminated. The Labour Court has also considered this contention and come to the conclusion that the petitioner-Municipality has not proved that is there any departmental inquiry has been initiated against the respondent-workman for the allegations of negligence and whether any opportunity was given to the respondent-workman before terminating his service or not. Thus, the petitioner-Municipality has not proved the allegation against the respondent workman by leading oral or documentary evidence before the Labour Court. The third contention which was raised by the petitioner-Municipality before the Labour Court that the said post has not been sanctioned by the Government and it was not a scheduled post, and therefore, the termination of the respondent-workman is legal. The said contention is also examined by the Labour Court. The LC has come to the conclusion that once the workman has been appointed and he remained in service for more than one year and completed 240 days continuous service, then it is the duty of the petitioner-Municipality to comply with the mandatory provisions of Section 25-F; prior to terminating the service of the respondent-workman. It is undisputed fact that Section 25-F has not been complied with by the petitioner-Municipality at the time of terminating service of the respondent-workman.

Considering the entire evidence available on record, the Labour Court has come to the conclusion that the termination order which has been passed by the petitioner-Municipality against the workman is illegal and void ab initio and as a result thereto, the respondent-workman is entitled to full backwages of the interim period with continuity of service.

I have considered the averments made in the petition and gone through the entire award passed by the Labour Court. Learned Labour Judge has decided each and every contention which has been raised by the petitioner-Municipality and also applied his mind in respect to the contention which has been raised by the petitioner-Municipality and has given reasons in support of the conclusion in respect of each contention raised by the petitioner-Municipality. The Labour Court has rightly followed the settled law laid down by the Apex Court and it is undisputed fact that the respondent-workman has completed 240 days continuous service within a period of one year and no contrary evidence has been produced on record by the petitioner-Municipality before the Labour Court. Thus, the Labour Court has rightly relied upon the oral evidence of the respondent-workman vide Exh. 11 and come to the conclusion that the respondent-workman has completed 240 days continuous service within a period of one year. It is also undisputed fact that at the time of termination, the petitioner-Municipality has not complied with the provisions of Section 25-F of the I.D Act and no notice or notice-pay and retrenchment compensation were paid to the respondent-workman at the time of termination, and therefore, the order of termination violates the mandatory condition precedent of Section 25-F, rendering the order of termination void ab initio. In respect of awarding the backwages, the Labour Court has considered the evidence of respondent-workman vide Exh. 11 that after termination he remained unemployed and even at the date of deposition also, he mentioned that he is unemployed though sufficient efforts were made by him for searching the job but he was not able to get any job during the interim period from the date of the termination. The petitioner-Municipality has not proved the gainful employment of the respondent-workman by leading any oral evidence or by producing any documentary evidence before the Labour Court, therefore, in such a situation, considering the fact that once the termination order is held to be illegal and requires to be quashed and set-aside on the ground of non-compliance of condition precedent and violation of provision of Section

25-F, then naturally, the workman is entitled to full backwages for the interim period during which he remained unemployed. It is the duty of the petitioner-Municipality to prove the gainful employment. But in the present case, there was no evidence on record to prove the gainful employment of the respondent-workman, therefore, considering the decision of the Apex Court reported in AIR 1979 SC 75 in the matter of Hindustan Tin Works Limited, the respondent-workman is entitled to full backwages for the interim period.

After considering the entire award and submissions of the learned advocates, I am of the opinion that the Labour Court has not committed any error while passing the impugned order. Further, the findings recorded by the Labour Court are not perverse or baseless. The Labour Court has applied its mind and given reasons in support of its conclusion and I find no merits in this petition.

Further, this petition is preferred by the Municipality under Articles 226 and 227 of the Constitution of India. This Court having very limited powers under Article 226 and 227 of the Constitution of India cannot act as an appellate Court and cannot reappreciate the evidence, as held by the Apex Court in the reported decision in the matter of Ahmedabad Municipal Corporation v. Virendrakumar Jayantibhai Patel 1998 (1) GLR 17 and in the matter of AIR 1998 SC Weekly 1840. Therefore, considering the limited powers with this Court under Articles 226 and 227 of the Constitution of India, I see no merits in this petition. Hence, this petition is required to be dismissed.

While parting, this Court has granted the interim stay against the backwages on 1st February, 1993 and as a result thereof, the backwages are held-up because of the said interim relief granted by this Court. According to Mr. Soni, the workman concerned has already retired from service. In view of this fact, in the larger interest of justice, if it is directed that the petitioner-Municipality shall pay the full backwages; as ordered by the Labour Court, Anand vide Award dated 13th October, 1992 to the respondent-workman, then it will meet the ends of justice. Accordingly, I direct the petitioner-Municipality to pay full backwages to the respondent-workman as awarded by the Labour Court, Anand vide its Award dated 13th October, 1992 passed in Reference Case No. 60 of 1992, within a period of six months from the date of receipt of certified copy of this

order.

Rule is discharged. Interim relief granted earlier stands vacated. No order as to costs.

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Prakash*